

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

FRANCISCO CAMACHO (deceased), *Applicant*

vs.

GABLE HOUSE BOWL, INC.;
EVEREST NATIONAL INSURANCE, administered by SEDGWICK CLAIMS
MANAGEMENT, *Defendants*

Adjudication Number: ADJ12242523
Los Angeles District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration of the July 31, 2023 Findings and Order and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report and opinion, which are both adopted and incorporated herein, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the July 31, 2023 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 23, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**SOCORRO ROBLES PEREZ CAMACHO
GRAIWER & KAPLAN, LLP
RUSSELL LEGALGROUP, APC**

JMR/ara

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

The applicant, Socorro Robles Camacho, was the widow filing in a death claim regarding her husband, Francisco Camacho, who was employed as a janitor, aged 66 when he passed away. Petitioner is Jorge Miguel Camacho Robles, (“Jorge Robles”) adult son of the applicant and the decedent who held a power of attorney for applicant Socorro Robles Camacho at the time of her death.

The verified Petition is timely filed on 8-24-2023 following service of the Findings and Order on 7-31-2023. No Answer has been received to date.

The petitioner’s contentions: 1. That the WCJ erred in finding facts not supported by the record. 2. That the WCJ erred in not finding a valid power of attorney. 3. That the WCJ erred in finding a mutual mistake of fact. 4. That the WCJ erred in not ordering penalties under Labor Code Section 5814.5 to enforce the Compromise and Release.

II.
FACTS

On 9-5-2020 Applicant Socorro Robles Camacho executed a Power of Attorney in favor of her son Jorge Robles. Applicant Socorro Robles Camacho passed away 2-11-2021. A Compromise and Release Agreement was executed on 4-1-2021 by defendant and Jorge Robles. The signature stated “Jorge Miguel Camacho Robles with Power of Attorney on behalf of Socorro Robles Perez”. A copy of the Power of Attorney was attached. The Power of Attorney did not specifically provide for the powers to extend beyond the death of the principal. The Power of Attorney did not provide for any payment to, or monetary interest of, Jorge Robles in the proceeds of any agreement. The Power of Attorney did not state that the principal was in any way incapacitated. The applicant herself signed the Power of Attorney.

At the time of execution of the Compromise and Release on 4-1-2021, neither counsel for applicant nor Jorge Robles disclosed to defendants that the applicant was deceased. At the time an Order Approving Compromise and Release was sought, this WCJ was not informed that the applicant was deceased. The Order Approving Compromise and Release issued on 4-12-2021. A check for the proceeds of the Compromise and Release less attorneys fee payable to the applicant Socorro Robles Camacho and decedent Francisco Camacho timely issued. A check for the attorneys fee was issued to Graiwer and Kaplan who represented both Socorro Robles Camacho and Jorge Robles.

On 6-17-2021 applicant’s counsel, then acting for Jorge Robles, requested defense claims examiner to reissue the payment in his name because the check could not be negotiated. This was defendant’s first notice that widow Socorro Robles Camacho had passed. Defendants refused to

reissue the check. On 6-29-2021 defendants filed a Petition to Set Aside OACR and C&R, counsel for Jorge Robles filed a response. The matter was the subject of a trial with testimony by both Jorge Robles and a defense claims examiner, resulting in the Findings and Order under reconsideration presently.

Counsel for Petitioner offers no evidence that the firm represents the Petitioner. No Notice of Representation has been filed regarding the Petitioner. Defendant did not object to standing of the Petitioner to litigate the issues presented. No evidence was submitted that Jorge Robles is the son of the decedent or the applicant or was at any time a dependent of the decedent. No evidence was submitted that Jorge Robles was or is the legal heir of the applicant. The Power of Attorney was executed by the applicant on 9-5-2020, then filed 12-20-21. The applicant did not have a Guardian ad Litem or Conservator at any time in this litigation. No proof of service is entered into evidence so the WCJ is unaware of when defendants learned of the power of attorney.

III. **DISCUSSION**

1. The Petition Is Properly Viewed As A Petition For Reconsideration.

A Petition for reconsideration may only be taken from a final order, decision or award, Labor Code Sections 5900(a), 5902 and 5903. A final order is one that “determines any substantive right or liability of those involved in the case”, *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 45 Cal.Comp.Cases 410; *Hansen v. Workers’ Comp. Appeals Bd.* (1988) 53 Cal.Comp.Cases 193 (Writ Den.); *Jablonski v. Workers’ Comp. Appeals Bd.* (1987) 52 Cal.Comp.Cases 399 (Writ Den.)

In the present case Petitioner is correctly propounding a petition for reconsideration of a Findings and Order which is finally dispositive of any claim for compensation in the case in chief.

2. Petitioner Contends That the WCJ Erred In Finding Facts Not Supported By the Record.

Petitioner lists 11 items that are contended to be unsupported by the facts. Respectfully, a close reading of each of them will reveal each and every fact is supported by the evidence, most in Exhibit C, the Power of Attorney. It is noteworthy that Petitioner offers no evidence to support his arguments. A close review of the Power of Attorney, Exhibit C, will reveal that it grants no financial rights or personal interest to Jorge Robles. The document gives him the power to act for Socorro Robles Camacho in the workers compensation case, not to keep the proceeds. Exhibit C gives Petitioner no personal interest in the proceeds of the litigation. Exhibit C describes no rights or powers specifically intended to last after the death of Socorro Robles Camacho.

Petitioner in fact did not meet his burden of proof on all 11 issues at trial. For example, at item 7, Petitioner contends another unsupported fact is the determination Jorge Robles and his counsel withheld the fact that Socorro Robles Camacho had passed away at the time of the execution of the C+R. Defendant’s witness testified credibly that their first knowledge of the death of Socorro Robles Camacho was on 6-22-2021, MOH/SOE 5-16-2023, p.5 l.12-14. The Compromise and Release was signed on 4-1-2021. Petitioner offered no rebuttal testimony or evidence. A claim that the finding is unsupported is disingenuous and factually incorrect.

The petitioner testified. He did not testify about the substance of the power of attorney or whether he disclosed the prior death of the applicant at the time the C+R was executed. In any case, the document as a matter of law speaks for itself. As will be discussed in detail below and was discussed in the Finding and Order, the Power of Attorney does not qualify as a durable power of attorney on its face, and therefore does not survive the death of the person granting the power.

Petitioner complains that the undersigned based her opinion on law which was not included in the trial briefs. Respectfully, the parties were aware from the beginning that the primary issue was the validity of the Power of Attorney. The WCJ is not bound by the Trial Briefs. How the parties choose to analyze and prepare their case should not be a concern of the WCJ and should not be a subject for reconsideration.

3. Petitioner Contends That the WCJ Erred In Not Finding A Valid Durable Power of Attorney.

Facts are Supported

Petitioner contends that the WCJ overlooked the words in the Power of Attorney “regarding my husband pending WCAB case, D/A: October 11, 2018”. The undersigned reviewed and noted that language. It has no relevance to the issues: the Power of Attorney clearly gives the agent the right to sign documents related to the litigation. The problem is that it the Power of Attorney does not specifically state that the right survives the death of Socorro Robles Camacho. It is not a Durable Power of Attorney. When the applicant died, petitioner’s rights died with her.

Petitioner further contends it gives Jorge Robles an “interest” in the litigation. The document gives Jorge Robles an interest to the extent that he may act for Socorro Camacho Robles in this litigation during her lifetime. There are no words passing any financial or personal interest in the proceeds to Jorge Robles, during her lifetime or after. Petitioner’s repeated use of the word “interest” is not accurate, because it does not state what the interest actually is. Considering the Power of Attorney a contract, the terms stated give Jorge Robles the right to act for Socorro Camacho Robles, but never give him the right to keep the money. Jorge Robles has the rights granted specifically by the Power of Attorney and no others. It is completely inappropriate to assume or read into the language of the document to find rights not specifically granted.

Petitioner contends that Jorge Robles testified in support of his personal interest in the proceeds of the case. The record shows no such testimony. The witness in fact testified that he held a power of attorney in the case. The witness also stated that he “signed the Compromise and Release for his mother”. MOH/SOE 5-16-2023 p.5 l. 19-23. He did not testify that he held any personal right, expectation or interest, did not testify that he was the heir of his mother Socorro Camacho Robles, and did not offer any evidence that he was the heir. Petitioner did not meet his burden of proof that he held a personal right or his own “interest” to overcome the presumption of termination of power of attorney at death.

Petitioner also contends there was no deceit. All parties were aware that Socorro Robles Camacho was acting through an agent, her son, with the power of attorney prior to her death. (Although it is unknown when the Power of Attorney was served, it was filed for the first time 12-20-21.) The

applicant had been acting for some months before her death through Petitioner with the power of attorney. However, there is evidence that defendant was unaware that Socorro Robles Camacho was deceased at the time of execution of the C+R. The fact of the death of the applicant is highly material at the time the C+R was signed. Withholding that information deprived the defendants of the opportunity to determine that the power of attorney was not durable and thus invalid at the settlement execution. Petitioner contends that Defendant did not use due diligence to learn of the applicant's death. This is disingenuous. Defendant would have no way of knowing even what country the applicant was living in at the time of her death. Further, Petitioner did not file his address for the Official Address Record (and still has not done so).

The Power of Attorney was not valid when the C+R was executed

The Finding and Order includes an exhaustive analysis of why the power of attorney is invalid. A brief review is included here. California Civil Code Section 2356(a)(2) states:

“Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated by any of the following:

(2) The death of the principal.”

It is stipulated by the parties that the applicant, Socorro Robles Camacho passed away on February 11, 2021, before the Compromise and Release was executed on April 1, 2021, which terminates the power of attorney under Civil Code Section 2356(a). Civil Code Section 2356 (b) provides an exception. Where the power of the agent is “coupled with an interest in the subject of the agency” is it not terminated by death. There are 3 requirements for an agency coupled with an interest:

“For an agency agreement to be coupled with an interest, it must be *all* of the following:

- Held for the benefit of the agent rather than the principal.
- Created to secure the performance of a duty to the agent or to protect a title in the agent.
- Created at the same time that the duty or title is created or be created for consideration.”

Becket v. Welton Becket & Associates (1974) 39 Cal. App. 3d 815, 820, 114 Cal. Rptr. 531, citing *Restatement of Agency* § 138.

Here there is no evidence that when the Power of Attorney was created, the proceeds of this case were given to the Petitioner. There are no words in the document to evidence this, and no testimony to support it. Further, any interest was entirely speculative and unproved at that time. There is also no evidence that there was any title created for Jorge Camacho, or any specific duty required. Because the Power of Attorney does not grant a right to keep the proceeds, there is no benefit to the agent. This Power of Attorney is not coupled with an interest. The Power of Attorney is not durable and terminates with the death of the applicant.

[]It must be emphasized that for an agency to be coupled with an interest, the interest must be a specific, present, and coexisting interest in the subject of the agency; the interest cannot be obtained by the exercise of the agency. [] *O'Connell v. Superior Court* (1935) 2 Cal. 2d 418, 422, 41 P.2d 334;

Petitioner contends that the wording inserted in the Power of Attorney “regarding my husband pending WCAB case, D/A: 10/11/2018” grants the agent Jorge Robles an *interest* in the litigation. Taking the clear language on its’ face, it grants the agent the right to *act* in the case only. There is no language whatsoever in the power of attorney granting a right to keep the proceeds of the litigation. The Petitioner has no *interest* in the proceeds of the litigation therefore the requirements of the exception to the automatic termination of the power of attorney at death are not met.

In the instant case, no written evidence or testimony is offered that any of the 3 requirements of *Becket, supra* have been met. The interest of the agency, i.e the proceeds of the Compromise and Release, can only be obtained by the exercise of the agency after the agency is created. The Power of Attorney, Exhibit C, gives the agent Jorge Robles no benefits or personal rights in any of the proceeds of the agreement in the present or future. The Power of Attorney authorizes action to benefit the applicant only. The Power of Attorney solely empowers Jorge Robles to act for the applicant. The Power of Attorney was created about rights that at the time were speculative, as the proceeds of the lawsuit had not been determined. No actual right existed at the time the Power of Attorney was created, so the three part test of *Becket, supra* is not met. The agency power of attorney is terminated with the death of the principal.

Under Civil Code Section 2356(a)(2) the interest of the agent at the time the agency is created must be a present interest, not created by exercising a future interest. There is no evidence that Jorge Robles had any legal and legitimate present interest in the proceeds at the time the power of attorney was signed. Further, the power of attorney did not give Jesus Camacho any legal right to any future proceeds, and such a future right would not meet the requirements of subsection (a). Again, Petitioner fails in his burden of proof of an interest in the proceeds of the litigation or the right to take such proceeds under the Power of Attorney. Since there is no evidence that the agency here was coupled with an interest in the subject of the agency at the time the agency was created, the requirements of Civil Code Section 2356(a) have been met, and the Power of Attorney terminated on the death of the applicant.

In the Finding and Order, the undersigned noted there was an exception to Civil Code Section 2356(b) which states:

“(b) Notwithstanding subdivision (a), any bona fide transaction entered into with an agent by any person acting without actual knowledge of the revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors in interest”.

Subsection (b) grants a right on the third party in the transaction to bind the principal. It does not offer the same right to the agent, so is not directly relevant here. However, Petitioner questions my finding that execution of the C+R was not a bona fide transaction. This touches on the reason there

was ultimately a mutual mistake of fact, so bears consideration here. “Bona fide” is defined as follows:

[] Viewing the term "bona fide" within the entire statutory scheme in which it appears, we conclude that it is there used in the first lexical sense adverted to above -- to wit, that of honesty, fair dealing, and freedom from deceit. [] *Merrill v. Department of Motor Vehicles*, 71 Cal. 2d 907(1968).

Petitioner, the agent, and his counsel withheld the knowledge that the individual holding the legal rights to be relinquished had actually passed away. The agent entering into the contract did not have any direct rights to compensation in the case. It cannot be said that the agent and his counsel acted with “honesty”, “with “fair dealing” and with “freedom from deceit” when the disclosure of the death could have led to a good faith basis to withdraw the settlement offer. The value of the proposed Compromise and Release was \$85,000.00 while the value of the accrued benefits was \$38,226.26, based on the testimony of the defense witness. At the time the Compromise and Release was signed, months after the death of the applicant, the transaction was no longer “bona fide”, no longer in the words of the Supreme Court, “fair dealing”. Given the transaction was not a bona fide transaction, the exception of Section 2356 (b) does not apply. The power of attorney terminated at the time of the death of the applicant. The execution of the Compromise and Release by Jorge Robles was invalid. The agreement is void.

The Power of Attorney is also invalid based on Probate Code Section 4152(a)(4) which states in pertinent part:

(a) Subject to subdivision (b), the authority of an attorney-in-fact under a power of attorney is terminated by any of the following events:

(4) Death of the principal, except as to specific authority permitted by statute to be exercised after the principal’s death.

In the instant case, there is no specific authority in the Power of Attorney authorizing any actions after the death of the principal, so the document does not survive the death of the principal under Probate Code Section 4152.

The Power of Attorney does not qualify as a durable power of attorney which would allow it to be effective after the death of the applicant. The document does not include the warnings required by Probate Code Section 4128 to create a valid durable type power of attorney. The document also does not identify itself as a durable power of attorney. Finally, the document does not include a provision expressly stating that it is intended to grant powers to continue in effect after the death or incapacity of the principal. A power of attorney that is not specifically a durable power of attorney is terminated by incapacity of the principal, Probate Code Section 4155. Thus the power of attorney was not valid at the time the Compromise and Release was signed, which occurred after the death of the principal. This renders the Compromise and Release invalid.

4. Petitioner’s contention that the WCJ erred in finding a mutual mistake of fact.

At the time the settlement agreement was executed, both parties believed that Jorge Robles had a valid Power of Attorney that authorized him to sign the Agreement. The parties labored under a mutual mistake of fact that the Power of Attorney was valid on 4-1-2023. It is disingenuous for Petitioner to claim there was no mistake of fact when both sides have acted in accordance with that mistaken belief. Petitioner even now contends the Power of Attorney is valid, and files this reconsideration in support of his belief.

Defendants testified under oath to their belief the Power of Attorney was valid at trial as noted above. This testimony is unrebutted by Petitioner. Further the defendants petitioned to set aside the agreement as soon as they learned that the death of the applicant had occurred before the settlement was signed. Defendants executed the agreement and issued checks based on the Order Approving. It was not until they learned of the death of the applicant before execution of the settlement that they objected. The C+R was submitted to the undersigned WCJ for approval including the Power of Attorney. The undersigned prefers to believe that both parties genuinely believed the Power of Attorney was valid rather than that fraud was contemplated. There is no evidence of intentional fraud or deceit, only an omission of material fact to the WCJ. Both parties believed the Power of Attorney was valid at the time the agreement was signed, and acted accordingly.

5. That the WCJ erred in not ordering penalties under Labor Code Section 5814.5 to enforce the Compromise and Release.

The settlement was signed and an Order Approving obtained based on a mutual mistaken belief that the Power of Attorney was valid. Since the agreement was not valid and the Order Approving was obtained on false premises, no penalty for enforcing the Order is appropriate.

**IV.
RECOMMENDATION**

It is respectfully recommended that the Petition for Reconsideration be denied.

Dated: 9-1-2023

**Jerilyn Cohen
Workers' Compensation Judge**

OPINION ON DECISION

A Denial was issued by Defendant on 6-5-2019 based on causation. On 9-5-2020 Applicant Socorro Robles Perez Camacho executed a Power of Attorney in favor of Jorge Miguel Camacho Robles (hereinafter “Jorge Camacho”). A Compromise and Release Agreement was executed on 4-1-2021 by defendant and Jorge Camacho. The signature stated “Jorge Miguel Camacho Robles with Power of Attorney on behalf of Socorro Robles Perez”. A copy of the Power of Attorney was attached. The Power of Attorney did not specifically provide for the powers to extend beyond the death of the principal. The Power of Attorney did not provide for any payment to, or monetary interest of, Jorge Camacho in the proceeds of any agreement. The Power of Attorney did not state that the principal was in any way incapacitated. The applicant herself signed the Power of Attorney.

Applicant Socorro Robles Perez Camacho passed away 2-11-2021. At the time of execution of the Compromise and Release on 4-1-2021, neither counsel for applicant nor Jorge Camacho disclosed to defendants that the applicant was deceased. At the time an Order Approving Compromise and Release was sought, the WCJ was not informed that the applicant was deceased. The Order Approving Compromise and Release issued on 4-12-2021. Defendant Claims Examiner Linda de la Rosa credibly testified that Defendants learned of the death of the applicant for the first time from Counsel for applicant on 6-17-2021 when a check made payable to the applicant and decedent Francisco Camacho could not be negotiated.

1. AUTHORITY OF JORGE CAMACHO TO SIGN THE C+R FOR THE DECEASED APPLICANT ON 4-1-2021.

California Civil Code Section 2356 states:

“(a) Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated by any of the following:

- (1) Its revocation by the principal.
- (2) The death of the principal.
- (3) The incapacity of the principal to contract.

(b) Notwithstanding subdivision (a), any bona fide transaction entered into with an agent by any person acting without actual knowledge of the revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors in interest.

(c) Nothing in this section shall affect the provisions of Section 1216.

(d) With respect to a proxy given by a person to another person relating to the exercise of voting rights, to the extent the provisions of this section conflict with or contravene any other provisions of the statutes of California pertaining to the proxy, the latter provisions shall prevail.”

It is stipulated by the parties that the applicant, Socorro Robles Camacho passed away on February 11, 2021, before the Compromise and Release was executed on April 1, 2021. Civil Code Section 2356(a)(2) finds that the death of the principal, here Socorro Robles Camacho, terminates an

agency, the power of attorney, under certain conditions. Only where the power of the agent is “coupled with an interest in the subject of the agency” is it not terminated by death.

[]For an agency agreement to be coupled with an interest, it must be *all* of the following:

- Held for the benefit of the agent rather than the principal.
- Created to secure the performance of a duty to the agent or to protect a title in the agent.
- Created at the same time that the duty or title is created or be created for consideration.[] *Becket v. Welton Becket & Associates* (1974) 39 Cal. App. 3d 815, 820, 114 Cal. Rptr. 531, citing *Restatement of Agency* § 138.

[]It must be emphasized that for an agency to be coupled with an interest, the interest must be a specific, present, and coexisting interest in the subject of the agency; the interest cannot be obtained by the exercise of the agency. [], *O’Connell v. Superior Court* (1935) 2 Cal. 2d 418, 422, 41 P.2d 334

In the instant case, no written evidence or testimony is offered that any of the 3 requirements of *Becket, supra* have been met. The interest of the agency, i.e the proceeds of the Compromise and Release, can only be obtained by the exercise of the agency. The Power of Attorney, Exhibit C, gives the agent Jorge Camacho no benefits or personal rights in any of the proceeds of the agreement in the present or future. The Power of Attorney authorizes action to benefit the applicant only. The Power of Attorney solely empowers Jorge Camacho to act for the applicant. The Power of Attorney was created about rights that at the time were speculative, as the proceeds of the lawsuit had not been determined. No actual right existed at the time the Power of Attorney was created, so the three part test of *Becket, supra* is not met. The agency power of attorney is terminated with the death of the principal.

Under Section Civil Code Section 2356(a)(2) the interest of the agent at the time the agency is created must be a present interest, not created by exercising a future interest. There is no evidence that Jorge Camacho had any legal and legitimate present interest in the proceeds at the time the power of attorney was signed. Further, the power of attorney did not give Jesus Camacho any legal right to any future proceeds, and such a future right would not meet the requirements of subsection (a). Since there is no evidence that the agency here was coupled with an interest in the subject of the agency at the time the agency was created, the requirements of Section 2356(a) have been met, and the Power of Attorney terminated on the death of the applicant.

Section 2356(b) notes an exception:

“(b) Notwithstanding subdivision (a), any bona fide transaction entered into with an agent by any person acting without actual knowledge of the revocation, death, or incapacity shall be binding upon the principal, his or her heirs, devisees, legatees, and other successors in interest”.

Subsection (b) grants a right on the third party in the transaction to bind the principal. It does not offer the same right to the agent. Section 2356(b) requires that the transaction be “bona fide”. This is a question of law, *Merrill v. Department of Motor Vehicles*, 71 Cal.2d 907, 917- 921, *Granco Steel, Inc. v. Workmen’s Comp. App. Board* (1968) 68 Cal.2d 191, 197 [65 Cal.Rptr.287, 436 P.2d 287].

“Bona fide” is of course a Latin term whose literal English translation is the compound adjective “good faith.” Webster’s Third New International Dictionary (1961) indicates that it is or has been used in three different senses. The first of these signifies an absence of fraud or deceit and is used in connection with promises or representations -- e.g., a bona fide contract. The second imparts sincerity or “earnest or wholehearted intent” -- e.g., a bona fide proposal or suggestion. The third expresses genuineness or authenticity and is the antithesis of the spurious or counterfeit -- e.g., a bona fide Renoir.

The term “bona fide” has been used in a variety of legal contexts. Each such use reflects an emphasis upon one or more of the basic meanings set forth above...(examples omitted). Here the notion of honesty and lack of sharp dealing predominates, and therefore the first lexical meaning of the term is paramount.

Viewing the term “bona fide” within the entire statutory scheme in which it appears, we conclude that it is there used in the first lexical sense adverted to above – to wit, that of honesty, fair dealing, and freedom from deceit.” *Merrill v. Department of Motor Vehicles*, 71 Cal. 2d 907(1968).

In the instant case, a similar situation is found. Did the agent act with honesty, fair dealing, and freedom from deceit? It is found that he did not. The agent and his counsel withheld the knowledge that the individual holding the legal rights to be relinquished had actually passed away. The agent entering into the contract did not have any direct rights to compensation in the case. It cannot be said that the agent and his counsel acted with an “absence of deceit”, “with “sincerity” and with “genuineness” when the disclosure of the death could have led to a good faith basis to withdraw the settlement offer. The value of the proposed Compromise and Release was \$85,000.00 while the value of the accrued benefits was \$38,226.26. At the time the Compromise and Release was signed, months after the death of the applicant, the transaction was no longer “bona fide”, no longer in the words of the Supreme Court, “in good faith”. Given the transaction was not a bona fide transaction, the exception of Section 2356 (b) does not apply. The power of attorney terminated at the time of the death of the applicant. The execution of the Compromise and Release by Jorge Camacho was invalid. The agreement is void.

Probate Code Section 4152(a)(4) is also relevant. It states in pertinent part:

(a) Subject to subdivision (b), the authority of an attorney-in-fact under a power of attorney is terminated by any of the following events:

(4) Death of the principal, except as to specific authority permitted by statute to be exercised after the principal’s death.

In the instant case, there is no specific authority in the Power of Attorney authorizing any actions after the death of the principal, so the document does not survive the death of the principal under Probate Code Section 4152.

The Power of Attorney, Exhibit C herein, does not qualify as a durable power of attorney. The document does not include the warnings required by Probate Code Section 4128 for a durable type power of attorney. The document also does not identify itself as a durable power of attorney. Finally, the document does not include a provision expressly stating that it is intended to grant powers to continue in effect after the death or incapacity of the principal. A power of attorney that

is not specifically a durable power of attorney is terminated by incapacity of the principal, Probate Code Section 4155. Thus the power of attorney was not valid at the time the Compromise and Release was signed which occurred after the death of the principal. This renders the Compromise and Release invalid.

The Order Approving was obtained without disclosing the material fact of the death of the principal to the undersigned. The request for the Order was based on an invalid Compromise and Release with an invalid Power of Attorney. The Order Approving is vacated and set aside.

2. WHETHER THE POWER OF ATTORNEY DATED 9-5-2020 WAS VALID AT THE TIME THAT THE COMPROMISE AND RELEASE WAS EXECUTED ON 4-4-2021

Based on Civil Code section 2356 and Probate Code section 4152, as noted above, the Power of Attorney was not valid at the time the Compromise and Release was executed.

3. WHETHER DEFENDANT DISCOVERED NEW MATERIAL EVIDENCE AFTER THE C+R WAS AGREED UPON WHICH THEY COULD NOT, WITH REASONABLE DILIGENCE, HAVE DISCOVERED AT THE TIME THE C+R WAS ENTERED INTO, AND WAS THERE A MUTUAL MISTAKE OF FACT?

Whether there was discovery of new evidence is moot. The Compromise and Release fails due to a mutual mistake of fact. At the time the settlement agreement was executed, both parties believed that Jorge Camacho had a valid Power of Attorney that authorized him to sign the Agreement. As described above, this was not correct. It is found that the parties labored under a mutual mistake of fact that the Power of Attorney was valid on 4-1-2023. Given the Compromise and Release was invalid, the Order Approving arising from the Compromise and Release is vacated and set aside.

4. WHETHER APPLICANT'S ATTORNEY IDENTIFIED THE CORRECT PARTIES FOR PAYMENT IN PARAGRAPH 6 OF THE C+R.

The issue is moot, as the Compromise and Release is invalid.

5. APPLICANT'S PETITION FOR PENALTIES, ATTORNEY FEES

The issue is moot as the Order Approving Compromise and Release is vacated and set aside.

6. DEFENDANT'S PETITION TO SET ASIDE

The Compromise and Release signature is invalid, so the agreement is null and void. The Petition to Set Aside is granted.¹

DATE: 7/31/2023

Jerilyn Cohen
WORKERS' COMPENSATION JUDGE

¹ Defendant has not requested payment of penalties or interest regarding the attorneys fee already paid to counsel for applicant. Neither party has raised the issue of payment of accrued benefits in the event the Compromise and Release is declared invalid.